

**AMENDMENT NUMBER 1
TO
CONTRACT NO. DIR-TSO-2584
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
NORTHROP GRUMMAN SYSTEMS CORPORATION**

This Amendment Number 1 to Contract Number DIR-TSO-2584 (“Contract”) is between the Department of Information Resources (“DIR”) and Northrop Grumman Systems Corporation (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

The term of this Contract is extended for one (1) year through July 1, 2016. If vendor has no sales for the one-year term, DIR will not extend or negotiate any extensions. The Contract will expire July 2, 2016. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement, for up to the remaining two (2) additional one-year terms.

2. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 7. Pricing, Purchase Orders, Invoices, and Payments**.
3. **Contract, Section 8. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 4. Intellectual Property Matters**.
4. **Contract, Sections 5 - 9** are hereby re-numbered **Sections 4 – 7**.
 - A. **Section 5. DIR Administrative Fee** is re-numbered as **Section 4. Administrative Fee**;
 - B. **Section 6. Notification** is re-numbered as **Section 5. Notification**;
 - C. **Section 7. Statement of Work and Shrink/Click-wrap Agreements** is re-numbered as **Section 6. Statement of Work and Shrink/Click-wrap Agreements**;
 - D. **Section 9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts** is re-numbered **Section 7. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.

5. **Appendix A, Standard Terms and Conditions for Services Contracts dated 8/9/13**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 02/04/15**, as attached.
6. **Section 3, General Provisions, B. Modification of Contract Terms and/or Amendments, Subparagraph 3)** is hereby restated:

Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendor. Vendor has made the assumption that ARRA funds will not be utilized at this time to fund this Contract. Should after execution of this Contract, DIR or any Customer utilizes ARRA funds for this effort, such utilization shall be deemed a Contract work scope change and be subject to the execution of a mutually acceptable Amendment or Change Order to this Contract and/or the Customer Service Agreement or Purchase Orders as applicable to account for the additional Vendor reporting requirements. In addition, DIR and the applicable Customer shall provide Vendor with no less than sixty (60) days prior written notice of such funding. This advance notice is to allow Vendor enough time to comply with the reporting requirements stated under federal law in the ARRA.

7. **Section 4. Intellectual Property Matters, is hereby restated:**

A. Definitions

1. "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel

or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership

rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to

notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

8. Section 6, Contract Fulfillment and Promotion, C. Services Warranties and Return Policies, is hereby replaced in its entirety:

Vendor warrants that all services it performs under this Contract (including all products it provides) will be performed and provided in a good and workman-like manner and consistent industry standards and practices. Except as expressly set forth here or elsewhere in this agreement, vendor, its parent, subsidiaries and their affiliates, subcontractors and suppliers make no further warranties, expressed or implied, and specifically disclaim any warranty of merchantability, fitness for a particular purpose, or the fitness or suitability of the equipment on which the services are performed, or any modifications thereof, for any specific application, performance, result or use. No

warranty or representation shall be binding on seller unless in writing and signed by seller's authorized representative.

9. **Section 6, Contract Fulfillment and Promotion, H. DIR Cost Avoidance,** is hereby replaced in its entirety:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon ten (10) business day's advance written request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

10. **Section 8, Contract Administration, B. Reporting and Administrative Fees, 1) Reporting Responsibility, Subparagraph b)** is hereby replaced in its entirety:

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, Compliance Checks of Vendor's applicable Contract books at DIR's expense.

11. **Section 8, Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, Subparagraph a)** is hereby replaced in its entirety:

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within five (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within five (5) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within five (5) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

12. **Section 8, Contract Administration, C. Records and Audit, Subparagraph 3)** is hereby replaced in its entirety:

If DIR finds Vendor to be responsible for inaccurate reports that are material, DIR shall provide to Vendor documentation sufficient to determine the inaccuracies present. Vendor shall have not less than twenty (20) business days to review the reports and provide a written response to DIR with respect to the findings. If after review of Vendor's response, DIR determines that original findings with respect to Vendor's reports remain valid and that the inaccuracies are material, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) days of receipt.

13. Section 9, Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions, is hereby replaced in its entirety:

Vendor shall indemnify and hold harmless the State of Texas and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from and against any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees and expenses (the "Damages") arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Should the State of Texas or any other third party be wholly or partially at fault for any Damages, Vendor shall be obligated to indemnify only to the extent it is determined to be at fault. The foregoing will not limit or delay Vendor's obligations to defend the State of Texas and Customers, and to reimburse the State of Texas and Customers for Damages as they are incurred. To the extent that the State of Texas or Customers have actually incurred expenses, Vendor's obligations to indemnify and hold harmless the State of Texas and Customers will not be delayed by any allegation of contributory negligence, or by appeal. **VENDOR'S OBLIGATIONS SET FORTH ABOVE WILL NOT BE PRECLUDED, AVOIDED, OR LIMITED BY ANY CLAIM OF CONTRIBUTORY NEGLIGENCE.** Vendor shall pay all costs of defense including attorneys' fees or, in the case of proportionate responsibility, a pro-rata share of the costs consistent with its share of responsibility. The defense shall be coordinated by the Office of the Attorney General for Texas State Agency customers and by Customer's legal counsel for non-state agency customers. Vendor will not be required to indemnify or hold harmless for its non-wrongful, non-negligent performance of written directives of customers under this Contract or any purchase order issued under it.

14. Section 9, Vendor Responsibilities, A. Indemnification, 3) Infringements, is hereby replaced in its entirety:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of vendor pursuant to this Contract. Vendor and the Customer agree to furnish timely written notice to each other of any such claim. Vendor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by the Office of the Attorney General for the Texas State Agency customers and by Customer's legal counsel for non-state agency customers.

b) Vendor shall have no liability if the alleged infringement is caused solely by: (i) use of the service in combination with services not provided under the Contract, (ii) any intellectual property right owned by or licensed to Customer other than those conferred under this Agreement, and to which Customer has expressly agreed in writing, or (iii)

any use of service by Customer that is not in conformity with the terms of any applicable license agreement to which Customer has expressly agreed in writing.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

15. Section 9, Vendor Responsibilities, B. Taxes/ Worker's Compensation/UNEMPLOYMENT INSURANCE, Subparagraph 2) is hereby replaced in its entirety:

VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY FOR EMPLOYEE TAXES, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

16. Section 9, Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's aggregate liability for damages of any kind under the Contract other than for claims for third party patent, trademark or copyright infringement ("IP Claims") shall be limited to the lesser of: (A) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (B) \$20,000,000. Vendor's aggregate liability under the Contract for IP Claims shall not exceed \$15,000,000. CUSTOMERS SHOULD EVALUATE THEIR RISK FOR EACH PURCHASE: IF NEEDED, CUSTOMERS MAY NEGOTIATE HIGHER LIMITATIONS OF LIABILITY.

17. Section 9, Vendor Responsibilities, N. Required Insurance, Subparagraph 1) Commercial General Liability, and Subparagraph 3) Business Automobile Liability Insurance, are hereby replaced in its entirety:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) Requirement to endeavor to give 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) Requirement to endeavor to give 30-day Notice of Termination; and
- c) Additional Insured.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment 1 and then Contract DIR-TSO-2584.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 1 to be effective upon the date of the last signature but in all events, not later than July 1, 2015.

Northrop Grumman Systems Corporation

Authorized By: signature on file

Name: Kristen A. Walls

Title: Contracts Manager

Date: 6/2/2015

The State of Texas, acting by and through the Department of Information Resources

Authorized By: signature on file

Name: Dale Richardson

Title: Chief Operations Officer

Date: 6/18/2015

Office of General Counsel: signature on file 6/18/2015